

*analyzing rate structures and to guide states (and ultimately the courts) in structuring rates for interconnection and unbundling?* The question of specific rate structures should be left to the providers to propose and the state commissions to evaluate. A national policy that mandates specific pricing structures would likely be detrimental to competition. This entire issue of establishing pricing policies is an inexact science, especially when considering the nature of costs of providing local telecommunications services. A large majority of the costs are not related to a specific service. Traffic sensitive costs are hard to find with the deployment of digital switching and fiber optic transmission media.<sup>39</sup> The traditional treatment of costs as traffic sensitive and non-traffic sensitive may not have the meaning it did ten years ago in an analog/copper world. We encourage the FCC to examine Colorado's Costing and Pricing Rules for guidance in specific state implementation. It should be noted that our pricing policy leaves significant discretion to the provider to file rates and a rate structure, while requiring cost studies to support those rates. This requirement essentially forces the provider to file rates that are cost causative.

#### **(5) Discrimination**

##### **87. [NPRM ¶ 155-156] What is meant by the term "nondiscriminatory" in the 1996**

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<sup>39</sup> The processors in digital switches purchased for downtown Washington and suburban Greeley, Colorado will have the same processor and general capabilities. Due to digital switching architecture, the capacity of a digital switch is virtually traffic insensitive (except in very large blocks, wherein entire modules are added to accommodate the next large block of traffic). Also, the deployment of fiber optic technology for interoffice and loop feeder, the traffic sensitivity of such facilities has become very small. The cost of adding additional electronics on the ends of the fiber to accommodate additional traffic is very small relative to the overall cost of the fiber installation.

*Act compared with the term "unreasonable discrimination" in the 1934 Act? Does the term prohibit all price discrimination, including density zone pricing or volume and term discounts? Do §§ 251 and 252 prohibit only unjust or unreasonable discrimination? For example, may carriers charge different rates to parties that are not similarly situated? Should such pricing be allowed as a policy matter?* The CoPUC believes that Sections 251 and 252 can be interpreted to prohibit only unjust or unreasonable discrimination. We do not believe Congress intended to prohibit reasonably supported pricing plans that provide for cost-supported volume or term discounts. However, unsupported volume or term discounts or other unsupported price discrimination schemes should not be allowed.

**(6) Relationship to Existing State Regulation and Agreements**

88. *[NPRM ¶ 157] Given that § 251(d)(3) of the 1996 Act expressly bars the FCC from precluding enforcement of certain existing state regulations, what types of state policies would, or would not, be consistent with the requirements of § 251 and the purposes of Part II or Title II of the Act? How do the principles discussed in the NPRM affect existing state rules and policies, as well as negotiated agreements between carriers?* This is a section of the statute that supports our suggested policies throughout these comments. This section deals specifically with the ability for the states to implement rules or regulations concerning the establishment of access and interconnection obligations of local exchange carriers. This section prevents the FCC from prescribing or enforcing any regulations that would deny the states' ability to enforce its own regulations assuming that the state regulations conform to the three standards enumerated herein.

e. **Interexchange Services, Commercial Mobile Radio Services (CMRS),  
and Non-Competing Neighboring LECs**

89. *[NPRM 158 - 171] Do the terms of § 251(c) of the 1996 Act, imposing a duty on incumbent LECs to provide interconnection and unbundling to "any requesting telecommunications carrier", cover interconnection arrangements between incumbent LECs and providers of interexchange services, commercial mobile radio services (CMRS), and non-competing neighboring LECs?*

(1) *[NPRM ¶¶ 159 - 165] Interexchange Services:* Since a "telecommunications carrier" is defined in § 3(4) of the 1934 Act as "the offering of telecommunications for a fee directly to the public . . . regardless of the facilities used", the CoPUC concurs with the FCC's conclusion that carriers providing interexchange services are "telecommunications carriers" and thus may seek interconnection and unbundled elements under subsections (c)(2) and (c)(3). The CoPUC does not concur, however, with the FCC's suggestion that the statute may exclude interexchange services because the 1996 Act limits the purposes for which any telecommunications carriers, including interexchange carriers, may request interconnection, to only "transmission and routing of telephone exchange service and exchange access". This limitation is twofold: a) telephone exchange service, and b) exchange access. While interexchange service may be excluded under the definition of "telephone exchange service" as it is defined in Section 3(47) of the 1934 Act<sup>40</sup>, it is not excluded under

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<sup>40</sup> Section 3(47) of the 1934 Act defines "telephone exchange service" as "service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunications service of the character

"exchange access".

**(2) [NPRM ¶¶ 166 - 169] Commercial Mobile Radio Services (CRMS)**

90. *Do interconnection and transport/termination arrangements between incumbent LECs and CMRS providers fall within the scope of section 251(c)(2)?* The CoPUC agrees with Commissioner Chong's statement that the focus of the new rules should be to "encourage rapid entry into all telecommunications markets in a way that is technology neutral, ensures just and reasonable rates, and encourages interoperability of networks". However, the CoPUC has not yet investigated the best way to bring this about in CMRS.

**(3) [NPRM ¶¶ 170 - 171] Non-Competing Neighboring LECs**

91. *Do interconnection and transport/termination arrangements between incumbent LECs and other non-competing LECs fall within the scope of section 251(c)(2)?* Again, the CoPUC supports Commissioner Chong's statement, to the extent it affects all LECs.

**3. Resale Obligations of Incumbent LECs**

**a. Statutory Language**

92. *[NPRM ¶ 172-173] What is the most appropriate application of §251(c)(4) concerning the duty of incumbent LECs to offer certain services for resale at wholesale rates?*

The statutory resale obligations on incumbent LECs in Section 251(c)(4) of the 1996 Act provide for somewhat similar requirements for all LECs, but with additional language for the incumbents in this section. The CoPUC believes that both the Colorado statute and the 1996

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ordinarily furnished by a single exchange," or "comparable service[s]".

Act require all LECs to offer their services for resale. The 1996 Act does imply that the incumbent LECs are already offering services and that they cannot limit the resale of those services. All LECs in § 251(b)(1) are required not to prohibit or place unreasonable or discriminatory conditions on resale. However, the 1996 Act in § 253(d)(3) places additional requirements on incumbent LECs with regard to the pricing of the services. Our rules have taken all of these into account and we recommend that the FCC adopt a broad policy that places similar conditions on resale.

**b. Resale Services and Conditions**

93. *[NPRM ¶ 174] How should the resale duties imposed on the incumbent LECs compare to the resale duties imposed on all LECs?* The CoPUC has interpreted these sections of the 1996 Act similarly to the interpretation proposed by the FCC<sup>41</sup>. The only substantive difference between the resale requirements for incumbent LECs and the requirements for new entrants is the specification of specific wholesale rates for incumbent resale. We believe that incumbent LECs must offer their services at wholesale rates, as described in § 253(d)(3) of the 1996 Act. New entrants must offer their services for resale; however, they do not have similar wholesale pricing requirements. The CoPUC has decided to treat each new entrant's resale rate proposals under our Costing and Pricing Rules.

94. *[NPRM ¶ 175] What limitations, if any, should incumbent LECs be allowed to impose on services offered for resale? Should the incumbent LEC have the burden of proving*

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<sup>41</sup> See attached CoPUC orders from Docket No. 95R-557T and the rules attached to those orders.

*that a restriction it imposes is reasonable and nondiscriminatory? Should the "resale at the wholesale price" obligation on incumbent LECs extend to their discounted and promotional offerings? Should a LEC be permitted to avoid making a service available at wholesale rates by withdrawing the service from its retail offerings? If so, should it be required to make a showing that withdrawal of the offering is in the public interest or that competitors will continue to have an alternative way of providing the service? Does access to unbundled elements address this concern?*

The incumbent LECs should not be able to impose any unreasonable or discriminatory restrictions or limitations on the resale of its telecommunications services. This is exactly what the 1996 Act states and it should be the LECs' responsibility to prove that any proposed restriction is in compliance with the statute. Any restrictions that are granted should be very narrow, as proposed by the FCC.

95. Concerning the resale of discounted or promotional services or the incumbent LEC's "standard retail offerings", the CoPUC, in its recent "Resale Rules", requires resale of all services. However, we would be hesitant to use the yet undefined term "standard retail offering."

96. Finally, the issue of a LEC withdrawing a service rather than making it subject to resale is a current issue in Colorado. USWC has filed to grandfather its Centrex offering,<sup>42</sup> limiting it to existing customers only, which includes resale customers.

97. *[NPRM ¶ 176-177] What is meant by the language in § 251(c)(4)(B) that a State Commission may prohibit a reseller from offering a service to a different category of*

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<sup>42</sup> This proposal has been suspended by the Commission and set for hearing. Therefore, we cannot discuss any details in these comments.

*subscribers? Should any state policies on this subject be used in the federal policies? Would differences in state resale policies adversely affect new entrants in being competitive?* The CoPUC has elected to place this exact language from the 1996 Act into our rules.<sup>43</sup> Although arguments were presented in favor of various levels of restrictions, all parties agreed that some form of limitation regarding the resale of residential basic service as any other type of service would be prohibited. In our rule, we have disallowed any resale across categories of service. This is in light of the recognition that the cross-service subsidies might be a near term problem. Therefore, we have committed to revisit this issue at the same time we are required by state statute to evaluate our definition of basic service by July 1, 1999. Three years will give competition and regulatory actions time to examine or eliminate uneconomic subsidies. The FCC should allow the states to examine their own resale requirements in light of the 1996 Act. In any event, the FCC should realize that any elimination of cross-service resale restrictions would have to be done in a transitional period of at least three years.

**c. Pricing Wholesale Services**

**(1) Statutory Language**

98. *[NPRM ¶ 178] What is meant by "wholesale rates" in § 251(c)(4)? Can and should the FCC establish principles for the states to apply in order to determine wholesale prices in an expeditious and consistent manner?* The CoPUC has adopted rules for the pricing

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<sup>43</sup> See CoPUC decision from Docket No. 95R-557T attached, especially the order on reconsideration.

of wholesale services using the identical language in Section 252(d)(3).<sup>44</sup>

(2) Discussion

99. *[NPRM ¶ 180] Should the FCC issue rules for states to apply in determining avoided costs? Should avoided costs include a share of general overhead or "mark-up" assigned to such costs? How could this approach be adopted without creating unnecessary burdens on the LECs?* Since the states are explicitly given the responsibility to approve the wholesale rates filed by the incumbent LECs for resale services, it is our opinion that the states should promulgate their own rules for the determination of proper wholesale rates. The issues surrounding determination of avoided costs is an issue that each state has the expertise to evaluate proposals made by providers. The FCC makes a conclusory statement that LECs would reduce retail rates by avoided costs, ". . . offset by any portion of those expenses that they incur in the provision of wholesale service." The CoPUC does not find this in the statute. Although we may agree with such a conclusion, we do not believe such a statement should be made at the national level. The CoPUC has the statutory authority to obtain any and all necessary information from the incumbent LECs to determine a just and reasonable wholesale rate.

100. *[NPRM ¶ 181] Should the FCC instead establish a uniform set of presumptions that states could adopt and would apply in the absence of quantifications of costs by incumbent LECs? Or, should specific accounts, such as the Uniform System of Accounts, be used by the states to include as "avoided costs"? What other methods or ideas would be workable?* The

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<sup>44</sup> See Rule 4 CCR 723-40-3.6 in the resale rules attached to Decision No. C96-351 in CoPUC Docket No. 95R-557T.

calculation of avoided costs is the subject of current discussions between the CoPUC staff and USWC. It is obvious to us that the Colorado-specific anomalies and the USWC anomalies make it imperative that each state determine specific wholesale rates for each company. Any national policy should be very general since any further definition will likely cause confusion. We agree that there are several methods one might consider for the proper estimation of avoided costs. The following methods are being considered: (1) Use of specific USOA accounts applicable to avoided costs; (2) use of information from ARMIS reports; (3) service-specific studies on a sample of services extended to all services; and (4) service-specific avoided cost studies for some services and a general overall default based on (1), (2) or (3). To the question of whether avoided costs should include a portion of general overhead or "mark up" assigned to such costs, we believe that a general statement including or excluding such costs will cause further arguments about whether a cost is truly a general overhead, or is actually a joint cost that conceivably would be considered an avoided cost. We do not believe that the FCC should attempt to specify such detail in its rules.

101. *[NPRM ¶ 182-183] Should the FCC establish rules that allocate avoided costs across services? Should incumbent LECs be allowed, or required, to vary the percentage wholesale discounts across different services based on their percentage use? How can administrative complexity be avoided in this approach?* No, the CoPUC does not believe the FCC should establish rules to allocate avoided costs. Instead, the CoPUC believes that each state must examine the proposals of each incumbent LEC based upon the information provided in filings or otherwise available from the company. Upon the effective date of Colorado's rules

(June 30, 1996), USWC<sup>45</sup> is required to file resale tariffs with the CoPUC. In an effort to facilitate the process, the CoPUC staff has discussed these possible options and when the company makes its filing, we have the state statutory authority to obtain all necessary and sufficient information to audit their proposals. We do not envision the FCC getting involved in that process.

### (3) Relationship to Other Pricing Standards

102. *[NPRM ¶ 184-188] What should be the relationship between the rates for unbundled network elements and rates for wholesale or retail service offerings? Should Illinois' "imputation rule", requiring that the sum of the rates for unbundled network elements be no greater than the retail service rate, be adopted?* The CoPUC does not favor the adoption of a federal imputation rule. We have not adopted specific rules that impose a relationship between the sum of unbundled elements and the retail service rate, but we do have an imputation rule that requires any telecommunications provider to impute its rates for interconnection, unbundled network elements, termination of local traffic, and white pages listings into its own services. This rule is governed by the requirement that only services that utilize tariffed essential elements to provide a bundled service must impute those essential elements into the price floor for the service. However, this has been done on an individual case basis in Colorado.<sup>46</sup>

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<sup>45</sup> USWC is currently the only LEC in Colorado that will be required to offer services for resale under the incumbent status pricing requirements of Section 252(d)(3).

<sup>46</sup> Colorado currently requires imputation studies on two services: (1) intrastate toll must include imputed intrastate access charges as a part of its costs; and (2) intrastate BOC payphone

103. *[NPRM ¶ 188] Should the FCC consider a preemption order requiring that rates for local service exceed the cost of providing that service? Should interim rates be adopted to address the impact of federal implicit universal service subsidies on retail rates?* The issue of preemption of rates for local service that are "below cost" is an issue that the CoPUC strongly opposes. The conclusion that certain local services are below cost is arrived at by subscribing to the theory that local service should cover the costs of the local loop. Our discussion in these comments relative to the large percentage of joint (or shared) costs is instructive. In a business where as much as 90 percent of the costs are not directly attributable to a specific service, one would be hard pressed to argue that any service is not recovering its economic costs. It requires an assumption that residential service will recover most of the costs of an average loop, a position historically taken by most industry players. We recommend that the existing jurisdictional splits for the recovery of loop costs be maintained and that the FCC make no attempt to require any cost recovery requirements.

**C. Obligations Imposed on "Local Exchange Carriers" by Section 251(b)**

**1. Resale**

104. *[NPRM ¶ 196-197] What types of restrictions on resale of telecommunications service should be permitted, if any? What standards should be used to decide? What restrictions would be "unreasonable"?* We agree that few, if any, conditions or limitations

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service must include an imputation of public access line rates.

should be permitted on the resale of LEC services. In fact Rule 723-40-3.1 of our Resale rules<sup>47</sup> adopts this language specifically. We also agree that any restriction on resale should be presumed to be unreasonable absent an affirmative showing that the restriction is reasonable. In other words, the burden of proving the reasonableness of the restriction should be on the provider requesting the restriction.

## **2. Number Portability**

105. *[NPRM ¶ 198-201]* Colorado is currently in the process of implementing Local Number Portability according to the statute. Our progress on implementation of LNP is well-established in other forums. We believe that the FCC should recognize the consistent direction being developed across the states and adopt that direction in the Number Portability NPRM.<sup>48</sup>

## **3. Bill and Keep Arrangements**

106. *[NPRM ¶ 243]* *What policies have the states adopted with respect to bill and keep arrangements?* In its recent rulemaking, the CoPUC adopted an interim requirement for "bill and keep". During the hearings before the CoPUC, substantial disagreement existed between the parties regarding the propriety of adopting a bill and keep method. The Staff of the Colorado Commission and the Colorado Office of Consumer Council recommended the use of bill and keep on an interim basis. This was the middle-ground position, because USWC strongly

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<sup>47</sup> See attached Commission Decision No. C96-351 in Docket No. 95R-557T adopting rules relating to the Resale of Regulated Telecommunications Services.

<sup>48</sup> *Telephone Number Portability*, CC Docket No 95-116, 10 FCC Rcd 12350 (1995) (*Number Portability NPRM*)

opposed adoption of the method, even on a temporary basis, while the new entrants recommended continued use of bill and keep until certain market tests were met. The new entrants argued that bill and keep is appropriate, at least as an interim arrangement, because it will promote competition in the local exchange market.

107. In response to the argument that LECs are now unable to measure terminating local traffic, USWC stated that it is in the process of developing a mechanism for measuring such calls. Conversely, the new entrants pointed out that the measurement system being implemented by USWC is apparently a work-in-progress. Moreover, since only USWC possesses the system, new entrants would be required to purchase it from USWC at some as-yet-unknown costs. The CoPUC found that it was apparent that there is presently no proven mechanism readily available to new entrants for measuring terminating local traffic. Thus, the cost of measurement and billing under a reciprocal compensation arrangement are unknown at the present time.

108. The CoPUC also rejected the position of the new entrants that bill and keep be approved for some unknown period of time. USWC appears to be correct that bill and keep may not ultimately be reflective of cost causation. As such, the CoPUC adopted a rule which will encourage the development and deployment of effective measure to move to reciprocal compensation.

### **III. PROVISIONS OF SECTION 252**

#### **A. Arbitration Process**

109. [NPRM ¶¶ 265-67] *Should rules be promulgated concerning the Commission's duties under § 252(e)(5)?*<sup>49</sup> The CoPUC suggests that the FCC adopt such rules that will define the circumstances in which it will exercise authority under § 252(e)(5) (*e.g.* what constitutes a failure to act on the part of a State commission, how interested parties will notify the Commission of a State's failure to act, etc). The procedures adopted by the FCC should contain certain provisions.

110. First, the rules should provide for reasonable notice to and opportunity for comment on the part of State commissions to any allegation of failure to act. That is, the Commission should not assume jurisdiction over a matter based upon *ex parte* allegations of State nonfeasance. Rather, State commissions should be informed of such charges and be permitted a reasonable amount of time to respond to such allegations before a Commission decision to intervene.

111. Second, the rules should not attempt to specify the various mediation and arbitration rules or procedures which each State may employ in carrying out their responsibilities under § 252 at the risk of a Commission declaration that there has been a "failure to act" (*i.e.* to mediate and arbitrate when requested by negotiating carriers).<sup>50</sup> We note that, as public agencies created by State statutes and subject to various statutory enactments, State commissions

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<sup>49</sup> Section 252(e)(5) directs that the Commission assume the responsibilities of the State commission in circumstances where the State commission fails to carry out its responsibilities under § 252.

<sup>50</sup> We assume that § 252(e)(5) refers to a State commission's failure to participate in mediation or arbitration when requested by the parties pursuant to the provisions of §§ 252(a)(2) or 252(b)(1). Notably, a State's failure to act upon a submitted agreement within 30 days for arbitrated agreements, or 90 days for other agreements, will result in the agreement being deemed approved. *See* § 252(e)(4).

may be constrained in the procedures they may employ in mediating or arbitrating as contemplated in § 252. For example, State commissions, under their statutes, may be required to employ quasi-adjudicative procedures in mediating or arbitrating carrier disputes.<sup>51</sup> The Commission should not determine that a State commission has failed to act where that commission is complying with its own procedural rules relating to its responsibilities under § 252.<sup>52</sup> Such a determination would be inconsistent with the role of State commissions in implementing the Act.

112. Finally, we note that § 252(e)(5) applies only to a State commission's failure to act. That is, the statute cannot be employed to allow the Commission to review decisions on the part of State commission (*e.g.* if a party to an agreement disagrees with a State commission decision and alleges that the commission has "failed to act" in accordance with the Act or Commission rules). Such a practice would violate the provisions of § 252(e)(6)

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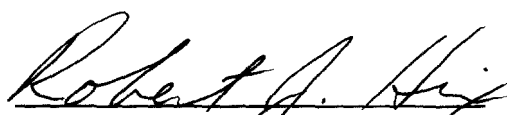
<sup>51</sup> So long as the State commission acts in a reasonably timely manner, the particular procedures used should be of no concern to the Commission. In particular, there is no indication in the Act that Congress intended to prescribe or preempt the procedures used by State commissions in mediation or arbitration. Moreover, the provisions of § 252(b)(1) (a party may request State commission to arbitrate during the period from the 135th to 160th day after a carrier request for negotiation) and § 252(b)(4)(C) (State commission shall conclude arbitration within 9 months of the date of a request for negotiation) require timely action on the part of State commissions.

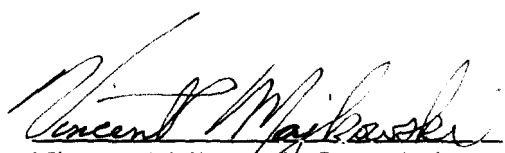
<sup>52</sup> The CoPUC has already requested comment from interested parties regarding the specific procedures which should be established (by rule) with respect to requests for mediation or arbitration under § 252. We intend to initiate a rulemaking proceeding in the near future to establish rules on this subject.

which specify that appeals of State commission decisions are to be brought in Federal district court.

Dated at Denver, Colorado this 14th day of May, 1996.

Respectfully submitted,

  
Robert J. Hix, Chairman

  
Vincent Majkowski, Commissioner

Colorado Public Utilities Commission  
1580 Logan Street  
Office Level 2  
Denver, CO 80203  
(303) 894-2000

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

\* \* \*

IN THE MATTER OF EMERGENCY RULES)  
RELATING TO THE APPROVAL OF )  
INTERCONNECTION AGREEMENTS )  
NEGOTIATED BY TELECOMMUNICATIONS)  
PROVIDERS WITHIN THE STATE OF )  
COLORADO. )

DOCKET NO. 96R-142T

DECISION ADOPTING EMERGENCY RULES

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Mailed Date: April 12, 1996  
Adopted Date: April 10, 1996  
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I. BY THE COMMISSION:

Statement

1. This matter comes before the Commission for adoption of emergency rules relating to the approval of interconnection agreements negotiated by telecommunications providers within the state. For the reasons set forth in this decision, we now adopt on an emergency basis (i.e., without compliance with the rulemaking requirements for permanent rules set forth in § 24-4-103, C.R.S.), the rules appended to this order as Attachment A. We take this action pursuant to the provisions of § 24-4-103(6), C.R.S.

2. The purpose of the rules adopted by this order is: (1) to prescribe the information to be submitted to the Commission by telecommunications providers when seeking approval of interconnection agreements negotiated prior to February 8, 1996; and (2) to establish procedures to be used by the Commission in reviewing such interconnection agreements. The rules attached to this order set forth specific requirements relating to each of these purposes.

3. We adopt the attached rules as emergency rules, in accordance with the provisions of § 24-4-103(6), C.R.S., in order to comply with the requirements of the recently enacted Telecommunications Act of 1996 ("the Act"), Public Law No. 104-104, 110 Stat. 56 (1996) (to be codified at 47 U.S.C. §§ 151 et seq.). President Clinton signed the Act into law on February 8, 1996.

4. In part, § 251(c) of the Act requires telecommunications carriers to negotiate in good faith the particular terms and conditions of interconnection agreements for the transmission and routing of telephone exchange service and exchange access. Section 252 of the Act sets forth the procedures for negotiation, arbitration, and approval of interconnection agreements between telecommunications providers. Significantly, §§ 252(a) and (e) mandate that all interconnection agreements between providers, including any agreement negotiated before the date of enactment of the Act, shall be submitted to the state commission (e.g., the Colorado Public Utilities Commission) for review and approval. The state commission may approve or reject any submitted agreement in accordance with the standards listed in § 252(e)(2) (commission may reject a negotiated agreement if it discriminates against a carrier not a party to the agreement, or implementation of such agreement is not consistent with the public interest, convenience, and necessity; commission may reject an agreement adopted by arbitration if it does not comply with the requirements of § 251).

5. Since the Act compels us to review and approve interconnection agreements between telecommunications carriers, including any agreement negotiated before February 8, 1996, we must establish procedures and informational requirements relating to our review and approval of such agreements. Given the mandates in the Act (i.e., for Commission review of previously-negotiated interconnection agreements), we find that immediate adoption of the rules attached to this decision is imperatively necessary to comply with federal law, and compliance with the rulemaking requirements associated with permanent rules, as set forth in § 24-4-103, C.R.S., would be contrary to the public interest. The statutory authority for adoption of these rules is set forth in §§ 40-2-108, and 40-3-102, C.R.S.

6. The rules attached to this order shall be effective immediately upon the mailed date of this decision. Such rules shall remain in effect until permanent rules become effective or for 210 days, whichever period is less.

## II. ORDER

### A. The Commission Orders That:

1. The rules appended to this Decision as Attachment A are hereby adopted as emergency rules consistent with the above discussion.

2. This Order is effective on its Mailed Date.

B. ADOPTED IN OPEN MEETING April 10, 1996.

(SEAL)



ATTEST: A TRUE COPY

A handwritten signature in cursive script, appearing to read "Bruce N. Smith".

Bruce N. Smith  
Director

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

ROBERT J. HIX

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VINCENT MAJKOWSKI

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Commissioners

COMMISSIONER CHRISTINE E. M. ALVAREZ  
RESIGNED EFFECTIVE APRIL 5, 1996.

TM:srs

**THE  
PUBLIC UTILITIES COMMISSION  
OF THE  
STATE OF COLORADO  
  
EMERGENCY RULES  
ESTABLISHING PROCEDURES  
RELATING TO THE SUBMISSION FOR APPROVAL  
OF INTERCONNECTION AGREEMENTS WITHIN COLORADO  
NEGOTIATED BY TELECOMMUNICATIONS PROVIDERS  
BEFORE FEBRUARY 8, 1996**

**4 CCR 723-43**

**BASIS, PURPOSE, AND STATUTORY AUTHORITY**

These rules are issued under the general authority of §§ 40-2-108 and 40-3-102 C.R.S., and are consistent with § 40-15-503 C.R.S. and 47 U.S.C. 252(a)(1). They establish the process to be used and the information required by the Commission to review a negotiated interconnection agreement submitted to the Commission for approval in accordance with 47 U.S.C. 252(a)(1), requiring that any interconnection agreement negotiated between telecommunications providers before the date of enactment of the Telecommunications Act of 1996, [February 8, 1996] shall be submitted to the State commission for consideration under 47 U.S.C. 252(e). The Commission is to act either to approve or to reject the interconnection agreement, with written findings as to any deficiencies, within 90 days after receipt of the submittal.

**RULE 4 CCR 723-43-1.      APPLICABILITY.** Pursuant to 47 U.S.C. 252(a)(1), these rules apply to all interconnection agreement(s) between and among telecommunications carriers negotiated before February 8, 1996, the date of enactment of the Telecommunications Act of 1996. Pursuant to 47 U.S.C. 252(e)(1), any interconnection agreements adopted by negotiation or arbitration shall be submitted for approval to the State commission.

**RULE 4 CCR 723-43-2.      DEFINITIONS.** The meaning of terms used in these rules shall be consistent with their general usage in the telecommunications industry unless specifically defined by the Colorado statute or this rule. In addition to the definitions in this section, the statutory definitions apply. In the event the general usage of terms in the telecommunications industry or the definitions in this rule conflict with the statutory definitions, the statutory definitions control. As used in these rules, unless the context indicates otherwise, the following definitions apply:

723-43-2.1      Commission. The Public Utilities Commission of the State of Colorado.

723-43-2.2      Negotiated Interconnection Agreement; or Agreement. An agreement entered into between or among Parties for the purpose of the electronic, optical or any other means of transmission of information between separate points by prearranged means.

723-43-2.3      Party(ies) to the Agreement; or Party(ies). Any telecommunications carrier providing telecommunications services in the State of Colorado.

723-43-2.4 Submittal. A filing made by a telecommunications provider with the Commission seeking approval of an Agreement pursuant to this Rule.

**RULE 4 CCR 723-43-3. REQUIREMENT TO SUBMIT.** Pursuant to 47 U.S.C. 252(a)(1), any telecommunications carrier that negotiated an interconnection agreement prior to February 8, 1996 shall submit such Agreement for review to the Colorado Public Utilities Commission (CPUC) on or before May 15, 1996. Fifteen paper copies of the Agreement and attachments shall be submitted to the Commission at its offices at 1580 Logan Street, Denver, Colorado. One additional copy shall be submitted in electronic format compatible with PC DOS TEXT, WordPerfect, or MicroSoft Word. Upon submittal, the Commission will assign a docket number to the Submittal.

**RULE 4 CCR 723-43-4. INFORMATION TO BE INCLUDED IN THE SUBMITTAL.** The Submittal shall contain, in the following order and specifically identified, the following information, either in the Submittal or in appropriately identified, attached exhibits:

723-43-4.1 Identifying Information -

723-43-4.1.1 The name, address, and telephone number of the Parties to the Negotiated Interconnection Agreement;

723-43-4.1.2 The name under which the Parties will provide their services if different from that provided in the carriers' current tariffs on file with the Commission;

723-43-4.1.3 The name and addresses of the Parties to the Agreement's representatives, if any, to whom all inquiries should be made;

723-43-4.1.4 If a Party to the Agreement is a corporation -

723-43-4.1.4.1 The state in which it is incorporated, and, if any out-of-state corporation, a copy of the authority qualifying it to do business in Colorado;

723-43-4.1.4.2 Location of its principal office;  
and

723-43-4.1.4.3 A copy of its Articles of Incorporation (unless a current copy is already on file with the Commission);

723-43-4.1.5 If a Party is a partnership, the name, title, and business address of each partner, both general and limited, and a copy of the partnership agreement establishing the partnership and later amendments, if any (unless a current copy is already on file with the Commission);

723-43-4.2 A Copy of the Entire Negotiated Interconnection Agreement - The Agreement, in its entirety including any attachments, shall be submitted and, pursuant to 47 U.S.C. 252(a)(1), shall include a detailed schedule of itemized charges for interconnection and each service or network element included in the Agreement.

723-43-4.3 Supporting Information - The Submittal shall contain, either in the Agreement, or by attachment, the facts upon which the Parties will rely to demonstrate that:

723-43-4.3.1 Approval of the Agreement is in the public interest;

723-43-4.3.2 Approval of the Agreement does not discriminate against other telecommunications carriers who are interconnected with any of the Parties to the Agreement;

723-43-4.3.3 Approval of the Agreement will encourage and not inhibit competition;

723-43-4.3.4 A description of the services which the Parties to the Agreement are providing pursuant to the Agreement;

723-43-4.3.5 A statement of the means by which the Parties to the Agreement are providing the services pursuant to the Agreement;

723-43-4.3.6 The agreed upon price of the interconnection services is, pursuant to 47 U.S.C. 252(d)(1), just and reasonable for the interconnection of facilities and equipment for purposes of 47 U.S.C. 251(c)(2); just and reasonable for network elements for purposes of 47 U.S.C. 251(c)(3); based on the cost of providing the interconnection or network element; nondiscriminatory; and may include a reasonable profit. The provider(s) of the service(s) shall provide, as part of the Submittal, its cost studies conducted in accordance with the Commission's Rules Prescribing Principles for Costing and Pricing of Regulated Services of Telecommunications Service Providers, 4 CCR 723-30.

723-43-4.4 Affidavit - An affidavit signed by an officer, a partner, an owner, or an employee, as appropriate, who is authorized to act on behalf of the submitter, stating that the contents of the submittal and all attachments, are true, accurate, complete and correct.

**RULE 4 CCR 723-43-5. INCOMPLETE SUBMITTAL.** In the event a Submittal is made which the Commission determines does not include the above required submittal information, the Commission shall, by an order, reject the Submittal within ten days from the date of the submittal, with written findings as to the deficiencies in the information submitted. The Parties to the